

1 Louie J. Yanza  
2 MAHER • YANZA • FLYNN • TIMBLIN, LLP  
3 115 Hesler Place, Ground Floor  
Gov. Joseph Flores Building  
Hagåtña, Guam 96910  
Telephone: (671) 477-7059  
Facsimile: (671) 472-5487  
5 Attorneys for Defendant  
GILBERT JOSE MATTA

FILED  
DISTRICT COURT OF GUAM

JUL 26 2005  
MARY L.M. MORAN  
CLERK OF COURT

(51)

7 U.S. DISTRICT COURT OF GUAM

8 UNITED STATES OF AMERICA,

CRIMINAL CASE NO. 05-00039

9 Plaintiff,

10 vs.

MOTION TO RECONSIDER  
11 DETENTION; MEMORANDUM OF  
LAW; DECLARATION OF COUNSEL;  
CERTIFICATE OF SERVICE

12 GERARDO ELOY GONZALEZ, JR., JOHN  
13 TIMOTHY PERALTA, DEANNA INGRID  
MORALES a/k/a DEANNA MORALES  
14 GUERRERO, SEAN MICHAEL COLE  
a/k/a SHAWN COLE, GILBERT JOSE  
15 MATTA, JESSICA ROSE MESA, LISA  
MARIE RODRIGUEZ a/k/a LISA  
16 RODRIGUEZ-COLE, AND ANNETTE  
JOYCE GONZALEZ a/k/a ANNETTE  
ROMERO

17 Defendants. /

18 TO: Plaintiff UNITED STATES OF AMERICA, by and through its attorney of  
record, MARIVIC P. DAVID, Assistant U.S. Attorney

21 MOTION TO RECONSIDER DETENTION

22 COMES NOW Defendant GILBERT JOSE MATTA ("MATTA"), through  
23 counsel, MAHER • YANZA • FLYNN • TIMBLIN, LLP, by Louie J. Yanza, and hereby  
24 moves this Honorable Court to reconsider releasing him on bail, with specific  
25 conditions as outlined below:

1       1. That Defendant MATTA be released on \$50,000.00 personal  
2                     recognition bond or, in the alternative;

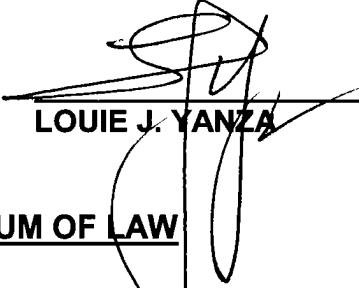
3       2. That Defendant MATTA be subject to electronic monitoring and drug  
4                     testing and, if required by Pretrial Services, and/or any other  
5                     conditions that this Court finds reasonable;

6       3. That Defendant MATTIA reside with his girlfriend and co-defendant,  
7                     JESSICA ROSE MESA, at 111 Chalan Balako, Dededo, Guam  
8                     96929.,

9  
10      This motion is based upon the notice, memorandum of law and documents and  
records on file herein.

11      Dated this 26<sup>th</sup> day of July, 2005.

12  
13      **MAHER • YANZA • FLYNN • TIMBLIN, LLP**  
14                     Attorneys for Defendant  
15                     **GILBERT JOSE MATTA**

16      By: 

17                     **LOUIE J. YANZA**

18                     **MEMORANDUM OF LAW**

19      Title 18 U.S.C. §3142, governs release of persons awaiting trial and permit  
20      courts to release those persons unless the judicial officer finds that the person is  
21      likely to flee or pose a danger to the safety of any other person or the community.  
22      Defendant MATTA asserts that there is a clear and convincing evidence that he is not  
23      a flight risk or that he does not pose a danger to the community.

1       Defendant MATTA is not a flight risk. He considers Guam his home. His  
2 girlfriend, Defendant MESA, resides here on Guam. When released, Defendant  
3 MATTA will reside with his girlfriend at 111 Chalan Balako, Dededo, Guam 96929.

4       Defendant MATTA also asserts he is not a danger to the community. Title 18  
5 U.S.C. §§3142 and 3143 do not provide a bright-line answer to what constitutes "danger"  
6 to the community. However, Congress did not declare that the community is entitled to  
7 assurances of freedom from all harm and a court cannot detain a defendant on the mere  
8 apprehension of danger of harm. Rather, the court's inquiry must focus on whether by  
9 conditions of release the community can reasonably be assured of safety. In this case,  
10 the Court can feel secure the community is not at risk should Defendant MATTA be  
11 released. Conditions of release can certainly be fashioned that will ensure the protection  
12 of the community.

13       This Court has many options rather than pre-sentencing incarceration. It can  
14 order daily appearances before pretrial services, electronic monitoring or other forms of  
15 curfew, full-time employment, third-party custody, drug testing, bail, and/or a property  
16 bond. In the instant case, this Court can also order a bond secured by Defendant  
17 MATTA in his girlfriend's home.

18       Moreover, there are many sanctions available to the Court should Defendant  
19 MATTA fail to comply with the terms and conditions of his supervised release. Under 18  
20 U.S.C. §3146, Defendant MATTA can be given a prison sentence apart from a  
21 consecutive to the sentence Defendant MATTA may receive if he is convicted of the  
22 underlying offense.

23       In addition, under 18 U.S.C. §3147, if the defendant commits a crime while on  
24 release, he will receive a sentence **consecutive** to the underlying offense. Section  
25

1 3147 is designed to deter those who would pose a risk to community safety by committing  
2 another crime when released and also to punish those who indeed are convicted of  
3 another offense.

4 Hence, this Court has at its disposal two highly effective statutes designed to  
5 deter persons from failure to appear and from committing offenses while on release.  
6 Defendant MATTA is fully aware of these sanctions, and respectfully submits this Court  
7 will not have to use them if Defendant MATTA is released on appropriate conditions.

8

9

### CONCLUSION

10 Defendant MATTA asserts that he is not a flight risk or danger to the  
11 community and respectfully requests that this Court release him upon terms and  
12 conditions this Court deems appropriate.

13

14

Respectfully submitted this 26<sup>th</sup> day of July, 2005.

15

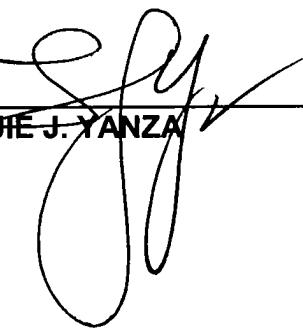
16

MAHER • YANZA • FLYNN • TIMBLIN, LLP  
Attorneys for Defendant  
**GILBERT JOSE MATTA**

17

18

By:

  
LOUIE J. YANZA

19

20

21

22

23

24

25

## **DECLARATION OF COUNSEL**

I, LOUIE J. YANZA, hereby declare and state as follows:

1. I am appointed counsel for Defendant GILBERT JOSE MATTA, having been appointed pursuant to the Criminal Justice Act.
2. That the facts and statements set forth in the foregoing document are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed in Hagatña, Guam, this 26<sup>th</sup> day of July, 2005.

~~HOMIE J YANZA~~

## **CERTIFICATE OF SERVICE**

I, Louie J. Yanza, hereby certify that on or before July 26, 2005, I caused to be sent by personal service or by facsimile a copy of the annexed **Notice of Motion; Motion to Reconsider Detention; Memorandum of Law; Declaration of Counsel; Certificate of Service**, to the following parties at their place of business:

**Ms. Marivic P. David**  
Assistant U.S. Attorney  
Suite 500, Sirena Plaza  
108 Hernan Cortez Avenue  
Hagatña, Guam 96910  
**Counsel for the United States of America**

**Howard G. Trapp, Esq.  
HOWARD TRAPP INCORPORATED  
200 Saylor Building  
139 Chalan Santo Papa  
Hagatña, Guam 96910**

**Joaquin C. Arriola, Jr., Esq.  
ARRIOLA, COWAN & ARRIOLA  
259 Martyr Street, Suite 201  
Hagatña, Guam 96910**

**Ms. Cynthia V. Ecube**  
LAW OFFICES OF CYNTHIA V. ECUBE  
207 Martyr Street, Suite 3  
Travel Pacificana Building  
Hagatña, Guam 96910  
**Counsel for Defendant Annette Joyce**  
**Gonzalez a/k/a Annette Romero**

**William L. Gavras, Esq.**  
LAW OFFICES OF GORMAN & GAVRAS  
2<sup>nd</sup> Floor, J&R Building  
208 Route 4  
Hagatña, Guam 96910  
**Counsel for Defendant John Timothy Peralta**

**Samuel S. Teker, Esq.  
TEKER TORRES & TEKER, P.C.  
130 Aspinall Avenue, Suite 2A  
Hagatña, Guam 96910  
Counsel for Defendant Deanna Ingrid  
Morales a/k/a Deanna Morales Guerrero**

11

11

1   **NOTICE OF MOTION; MOTION TO RECONSIDER DETENTION; MEMORANDAUM**  
2   **OF LAW; DECLARATION OF COUNSEL; CERTIFICATE OF SERVICE**  
3   **United States of America v. Gerardo Eloy Gonzalez, et al.**  
4   **U.S. District Court of Guam, Criminal Case No. 05-00039**

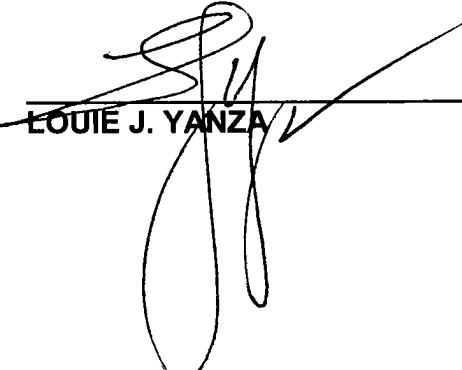
---

5                     **G. Patrick Civille, Esq.**  
6                     CIVILLE & TANG, PLLC  
7                     Suite 200, 330 Hernan Cortez Avenue  
8                     Hagatña, Guam 96910  
9                     **Counsel for Defendant Lisa Marie**  
10                   **Rodriguez a/k/a Lisa Rodriguez-Cole**

11                   Dated this 26<sup>th</sup> day of July, 2005.

12                   **MAHER • YANZA • FLYNN • TIMBLIN, LLP**  
13                   Attorneys for Defendant  
14                   **GILBERT JOSE MATTA**

15                   By:

16                     
17                   LOUIE J. YANZA